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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re D.M., a Person Coming Under the  
Juvenile Court Law.

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DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

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B292705

(Los Angeles County  
Super. Ct. No. DK23730A)

APPEAL from orders of the Superior Court of Los Angeles  
County, Nancy Ramirez, Judge. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel and Stephen D. Watson, Deputy  
County Counsel for Plaintiff and Respondent.

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Dorin M., Jr. (Dorin) was declared a juvenile court dependent and removed from the custody of his mother and father. Dorin's father appeals the juvenile court's orders, contending that substantial evidence did not support the jurisdictional finding as to him, and that the juvenile court abused its discretion by ordering Dorin removed from father's care. We find no error, and thus we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *A. Petition and Detention*

Dorin was born in June 2014. His parents, Ashley H. (mother) and Dorin M., Sr. (father), lived together briefly, but separated when Dorin was four or five months old.

In June 2017, the Los Angeles County Department of Children and Family Services (DCFS) received a referral that mother was using drugs and leaving drug paraphernalia within the reach of three-year-old Dorin. Mother said she had been sober for about two years, but recently had relapsed. She was being evicted from the room where she and Dorin were living. Father was living in Louisiana and had not seen Dorin in about a year. He said he wanted to have Dorin in his care, but he declined to have his home evaluated by Child Protective Services, saying that his great-aunt and uncle, with whom he lived, would not permit it.

DCFS filed a juvenile dependency petition in July 2017. As subsequently amended, it alleged, pursuant to Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b), as follows: (b-1) mother had a history of marijuana abuse and was a current abuser of ecstasy, marijuana, and methamphetamines, which rendered her unable to provide regular care and supervision of Dorin; (b-2) father had an extensive criminal history, including convictions for violent felonies, which placed Dorin at risk of serious harm; and (b-3) mother endangered Dorin by allowing him to play on railroad tracks.

Dorin initially was placed with mother, but was detained and placed in foster care in November 2017.

*B. Father's Criminal History*

Father has a lengthy criminal history. He served a three-year prison sentence from 1986 to 1989 for robbery, and he served additional time for narcotics convictions in 1990 and 1993. In 1996, father was convicted of a third-strike felony, for which he was sentenced to a prison term of 25-years-to-life.

In 2011, father was convicted of corporal injury of a spouse and was sentenced to four years in prison. Following his release, father was involved in two violent incidents with his then-girlfriend, Natasha M.: In April 2014, father scaled Natasha's second-floor balcony, entered her residence, kicked Natasha, and pushed Natasha's 17-year-old daughter, all in the presence of Natasha's one-year-old grandson; and in September 2014, father struck Natasha in the face with his closed fist, breaking her nose. As a result of the latter incident, father was convicted of corporal

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<sup>1</sup> All subsequent undesignated statutory references are to the Welfare and Institutions Code.

injury of a cohabitant in November 2015. In January 2016, father suffered yet another conviction, this time for violating a protective order.

*C. Father's Drug Tests, Visits with Dorin*

In November 2017, father moved to Los Angeles and told DCFS he planned to seek custody of Dorin. DCFS assessed father's home, discovering that father lived with a roommate who had a lengthy criminal history.

Father had his first monitored phone call with Dorin in March 2018. Father told Dorin he was going to come and get him, to which Dorin said, " 'no.' " Father responded: " 'Stop saying that shit, I know your stupid mom is making you say that.' " The foster parent intervened, and father became verbally aggressive. Later that month, the foster parent received a phone call from father, who said, " 'I am trying to talk to my fu\*\*\*\*\* son . . . . Put him on the fu\*\*\*\*\* phone.' " The foster parent reported that Dorin was scared of father and cried when he heard father's voice.

Father and Dorin had monitored visits beginning in April 2018. Although Dorin initially was hesitant to approach father, Dorin gradually became comfortable and began interacting with him. Father generally was appropriate during visits with Dorin, but he argued with his girlfriend about parenting during one visit, and repeatedly tried to discuss the case with the monitor during another.

Father twice failed to appear for drug tests, and he tested positive for cannabinoids on June 6, 2018.

*D. Jurisdiction/Disposition Hearing*

At the jurisdiction/disposition hearing on September 7, 2018, father's counsel asked that the allegation concerning father

be dismissed. Counsel urged there was no nexus between father's criminal history and risk of harm to Dorin because "these convictions or arrests were never involving his child at all."

The juvenile court sustained the allegations of the petition. With regard to father, the court stated as follows: "With regards to allegation (b)(2) that states that [father] has an extensive criminal history, including convictions of vehicle theft, possession of a controlled substance, transporting a controlled substance for sale, and that he has a violent criminal history, including convictions of attempted robbery, inflicting corporal injury to a spouse, the court is sustaining (b)(2) given his relatively recent domestic violence from 2016 and 2014 and noting the child's fearful reaction to father's phone visit and his inappropriate and aggressive behavior and tone of voice and word usage when he was on the phone with his son. This is a child of tender years."

With respect to disposition, the court ordered Dorin removed from both parents "pursuant to Dependency Court Order 415, the terms of which are contained in the minute order." The court granted father a minimum of two monitored visits per week at a DCFS-approved location, and ordered father to complete on-demand drug testing, parenting education, and individual counseling to address case issues, including domestic violence and anger management.

Father timely appealed.

### **DISCUSSION**

Father challenges the jurisdictional finding as to him, urging that his past criminal record did not place Dorin at current risk of harm. Father also challenges the dispositional order, contending that the court failed to make the required

removal findings and any implied removal findings were not supported by substantial evidence.

**I.**

**Father's Challenge to the  
Jurisdictional Order Is Not Justiciable**

As noted above, the juvenile court made true findings as to three counts of the juvenile dependency petition. On appeal, father challenges the court's finding only as to count b-2, the single count alleging that Dorin is a dependent because of father's conduct. As to that count, father contends the juvenile court's findings are not supported by substantial evidence.

DCFS asserts we need not address father's substantial evidence challenge to count b-2 because the juvenile court properly obtained jurisdiction over Dorin based on the unchallenged counts relating to mother. We agree. As DCFS notes, "a jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [him or] her within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. [Citation.]" (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492.) Thus, "[a]s a result of this focus on the child, it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child." (*In re I.A.*, at p. 1491.)

In this case, the findings relating to mother (counts b–1 and b–3) provide sufficient grounds for affirming the declaration of dependency as to Dorin. Because father does not challenge the

jurisdictional findings involving mother, any decision we might render on the allegation involving father will not result in a reversal of the court's order asserting jurisdiction. (See *In re I.A.*, *supra*, 201 Cal.App.4th 1492.) Accordingly, we decline to reach father's substantial evidence challenge to count b–2 of the petition.<sup>2</sup>

## II.

### **The Juvenile Court Did Not Abuse Its Discretion by Removing Dorin from Father's Custody**

#### *A. Legal Standards*

“After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court's supervision. [Citation.]” (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 145.)

Section 361, subdivisions (c) and (d) govern the removal of a dependent child from his parents' physical custody. As relevant to father's appellate claims, section 361, subdivision (d) provides: “A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child *did not reside* at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or

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<sup>2</sup> Father urges that the jurisdictional finding as to him is not moot because it could adversely affect him if Dorin were the subject of future dependency proceedings. We do not agree. The allegation against father is based solely on his lengthy criminal record, which undoubtedly would be a factor in any future dependency proceedings even if the present finding were reversed.

emotional well-being of the child for the parent . . . to live with the child or otherwise exercise the parent's . . . right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's . . . physical custody.” (Italics added.)

“A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she [is in the physical custody of] the parent. [Citation.] ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent's past conduct as well as present circumstances. [Citation.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169–170.)

Whether the conditions in the home present a risk of harm to the child is a factual issue. We therefore apply the substantial evidence test—that is, we review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, resolving all conflicts and making all reasonable inferences from the evidence in favor of upholding the juvenile court's orders. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

*B. Alleged Discrepancies Between the Minute Order and Reporter's Transcript*

Father contends that the removal order must be reversed because the reporter's transcript does not reflect that the juvenile court made the removal findings required by section 361, subdivision (d). Father concedes that these findings appear in



the court's minute order, but he urges they must be stricken as inconsistent with the record of the oral proceedings.

Father's contention is without merit. "The California Supreme Court has . . . stated that "a record that is in conflict will be harmonized if possible." ' (*People v. Contreras* (2015) 237 Cal.App.4th 868, 880, citing, inter alia, *People v. Harrison* (2005) 35 Cal.4th 208, 226.) If that is not possible, however, 'we do not automatically defer to the reporter's transcript, but rather adopt the transcript that should be given greater credence under the circumstances of the particular case. [Citation.]' (*People v. Contreras, supra*, at p. 880.)" (*In re D.B.* (2018) 24 Cal.App.5th 252, 257–258.)

In the present case, there is no conflict between the reporter's and clerk's transcripts. The juvenile court stated on the record that, "The court is removing the child from his mother and father pursuant to dependency court order 415, *the terms of which are contained in the minute order.*" (Italics added.) The minute order stated, among other things, as follows:

**"Dependency Court Order 415 . . .**

"The Court finds by clear and convincing evidence, pursuant to Welfare and Institutions Code sections 361(a)(1), 361(c), 361(d), and 362(a) . . . [that] [i]t is reasonable and necessary to remove the child from the parents . . . because there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child, and there are no reasonable means by which the child's physical health can be protected, without removing the child from the home and the care, custody, and control of that or those parent(s)/legal guardian(s).

“The court further finds that it would be detrimental to the safety, protection, or physical or emotional well-being, and special needs, if applicable, of the child to be returned to or placed in the home or the care, custody, and control of that or those parent(s)/legal guardian(s).

“The Department of Children and Family Services made reasonable efforts to prevent removal, but there are no services available to prevent further detention.”

Based on this record, we find no conflict between the reporter’s and clerk’s transcripts. To the contrary, the reporter’s transcript makes clear the court’s express intention to incorporate by reference the statutorily required findings set out in the minute order. Father cites no authority for the proposition that the juvenile court was precluded from proceeding in this manner, and thus we find no abuse of discretion.

*C. Substantial Evidence Supports the Juvenile Court’s Removal Findings*

Father contends the juvenile court abused its discretion by removing Dorin from his custody because there was no substantial evidence that living with father would have placed Dorin in substantial physical danger. We do not agree. As we have said, father had a violent criminal history that spanned nearly his entire adult life. Most significantly for our purposes, that criminal history included recent acts of violence against his intimate partners, including breaking a girlfriend’s nose because she “disrespected” his friend. At least one of these incidents occurred in the presence of his girlfriend’s teenage daughter and one-year-old grandson, and included father pushing the girlfriend’s daughter when she attempted to intervene. Father’s propensity to commit violent acts at home, including in the

presence of young children, is more than substantial evidence that living with father was likely to place Dorin at risk of physical or emotional harm.

Notwithstanding his extensive criminal history, father urges on appeal that Dorin was not at significant risk of harm because father had not suffered a criminal conviction since June 2016, and Dorin “ha[d] not actually suffered ‘ill effects’ from [father’s] behavior.” These contentions are without merit. Although father is correct that the most recent criminal activity revealed by the CLETS<sup>3</sup> search was in June 2016, approximately a year before the dependency petition was filed, father had been living in Louisiana for approximately a year, and the record does not reflect whether a Louisiana arrest or conviction, if one existed, would have been included in a CLETS report. In any event, in light of father’s 30-year violent criminal history, the trial court reasonably could have concluded that a one-year abstinence from criminal activity was insufficient to demonstrate that father was not likely to commit violent crimes in the future.

Nor are we persuaded that Dorin would not be at risk in father’s care because father had not harmed Dorin in the past. As we have said, father had not lived with mother or Dorin since the child was four or five months old, and father had lived in Louisiana for more than a year before DCFS became involved with the family. Because Dorin’s contacts with father appear to

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<sup>3</sup> CLETS is an acronym for the California Law Enforcement Telecommunications System. (*People v. Dawkins* (2014) 230 Cal.App.4th 991, 1003.)

have been extremely limited, it is unsurprising that Dorin had “not actually suffered ‘ill effects’ from [father’s] behavior.”<sup>4</sup>

For all of these reasons, we conclude that the juvenile court did not abuse its discretion in ordering Dorin removed from father’s custody.

### **DISPOSITION**

The jurisdictional and dispositional orders are affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.

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<sup>4</sup> We note, however, that notwithstanding Dorin’s extremely limited contact with father, Dorin appeared afraid of father when these proceedings began. Although Dorin gradually became more comfortable in father’s presence, father continued to behave aggressively towards Dorin’s caregiver.